IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3680 of 2002

with

SPECIAL CIVIL APPLICATION No 4988 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G E B

Versus

JAYANTILAL KESHAVLAL PRAJAPATI

Appearance:

1. Special Civil Application No. 3680 of 2002
   MR SP HASURKAR for Petitioner No. 1
   MR MUKESH H RATHOD for Respondent No. 1
2. Special Civil Application No. 4988 of 2004
   MR MUKESH H RATHOD for Petitioner No. 1
   MR SP HASURKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/08/2004

ORAL COMMON JUDGEMENT

1.0. Both these petitions are directed against the judgment and award made by the Labour Court, Kalol dated 2nd November, 2001 in Reference [L.C.K.] No. 448/99 below Exh. 19 and hence, they are heard together and they are now disposed of by this common judgment.

1.1. Special Civil Application No. 3680 of 2002 is filed by the petitioner Gujarat Electricity Board [hereinafter referred to as "the Board"] i.e. the employer of the concerned workman, challenging the judgment and award of the Labour Court whereby the Labour Court directed the petitioner-Board to reinstate the respondent-workman with continuity of service without backwages and a penalty of stoppage of three increments without future effect.

1.2. Special Civil Application No. 4988 of 2004, has been filed by the original workman challenging that part of the award whereby, he has been denied 100% of the backwages and also the penalty of stoppage of three increments without future effect, though the order of reinstatement with continuity of service has been passed in his favour.

2.0. The facts of the case as they emerge from the record of this petition are that the respondent-workman was at the relevant time working as Helper in Bhauhjraji Division of Mehsana District. In view of the serious misconduct alleged against the respondent-workman with regard to misuse of transformer and that he had used for his personal purpose, he was served with the chargesheet on 18th December, 1996. Inquiry was thereafter held and after the inquiry was over, the misconduct of the respondent-workman was proved and the disciplinary authority vide order dated 10th June, 1999 dismissed the respondent-workman from the service.

2.1. Being aggrieved by the order of dismissal, the respondent-workman raised industrial dispute, which was ultimately referred to the Labour Court for adjudication. Before the Labour Court, both the parties adduced evidence. After appreciating the material produced before it, the Labour Court partly allowed the Reference with the aforesaid directions. It is this award, which is now under challenge in these petitions.

3.0. Having carefully considered the submissions of

the learned advocates for the respective parties and having carefully gone through the record of the petition, especially the judgment and award of the Labour Court, it appears that the Labour Court has in paragraph 7 considered different principles which are laid down by the Apex Court and after appreciating the findings, it has substituted the penalty. Therefore, in my opinion, the reasonings given by the Labour Court are just and proper and no interference is called for.

3.1. So far as the question with regard to denial of 100% backwages is concerned, in my opinion, the Labour Court has rightly denied the backwages, in view of the fact that the respondent-workman has committed serious misconduct. So far as the penalty is concerned, the powers exercised by the Labour Court under Section 11-A substituting the penalty of stoppage of three increments without future effect is just and proper and no interference is warranted.

4.0. In the result, both the petitions are dismissed. However, it is clarified that the petitioner-Board will implement the award dated 2nd November, 2001, before 1st September, 2004. It is further clarified that the respondent-workman will be paid difference of salary from the date of the publication of the award till reinstatement, after deducting the amount which has been paid under Section 17-B of the Industrial Disputes Act. The arrears for the said period shall be cleared within a period of four months. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[K.S. JHAVERI, J.]

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